

U.S. Customs and Border Protection



PROPOSED REVOCATION OF THREE RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WIRELESS HEADPHONE SETS FROM CHINA AND AN UNDISCLOSED COUNTRY

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of three ruling letters, and proposed revocation of treatment relating to the tariff classification of wireless headphone sets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke three ruling letters concerning tariff classification of wireless headphones sets under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before December 9, 2022.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Erin Frey, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Due to the COVID-19 pandemic, CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Due to the relevant COVID-19-related restrictions, CBP has limited its on-site public inspection of public comments to 1625 notices. Arrangements to inspect submitted comments should be made in advance by calling Ms. Monique Moore at (202) 325–1826.

FOR FURTHER INFORMATION CONTACT: Dwayne Rawlings, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at dwayne.rawlings@cbp.dhs.gov

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke three ruling letters pertaining to the tariff classification of wireless headphone sets. Although in this notice, CBP is specifically referring to New York Ruling Letters ("NY") N022195, dated February 20, 2008 (Attachment A); NY N022204, dated February 20, 2008 (Attachment B); and NY N240329, dated April 22, 2013 (Attachment C), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N022195, NY N022204 and NY N240329, CBP classified wireless headphone sets in heading 8517, HTSUS, specifically in subheading 8517.62.00, HTSUS, which provides for “Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.” CBP has reviewed NY N022195, NY N022204 and NY N240329, and has determined the ruling letters to be in error. It is now CBP’s position that the wireless headphone sets are properly classified in heading 8518, HTSUS, specifically in subheading 8518.30.20, HTSUS, which provides for “Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof: Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N022195, NY N022204 and NY N240329, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H317791, set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

YULIYA A. GULIS
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N022195

February 20, 2008

CLA-2-85:OT:RR:E:NC:N1:109

CATEGORY: Classification

TARIFF NO.: 8517.62.0050

MR. TROY D. CRAGO
IMPORT SPECIALIST
ATICO INTERNATIONAL USA, INC.
501 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33301

RE: The tariff classification of a Bluetooth wireless stereo headphone from China

DEAR MR. CRAGO:

In your letter dated January 19, 2008 you requested a tariff classification ruling.

The merchandise subject to this ruling is a Bluetooth wireless stereo headphone. It is identified within your submission as Model # A015DA00031. This Bluetooth wireless stereo headphone features Bluetooth V2.0 + EDR (Enhanced Data Rate), support profiles of hands-free headset A2DP & AVRCP, a LI-ION rechargeable battery, which provides 12 hours of talk time, 10 hours of music time, and 260 hours of standby time, and has an operating range up to 30 feet. It has a built-in microphone, volume control with up/down/mute modes, a music control that enables the user to play music backward and forward, supports voice dial, last number redial, an LED for line-in-use & battery level check indication, and auto-switching between listening to music and making phone calls. A foldable headband and USB charger is included.

The applicable subheading for the Bluetooth wireless stereo headphone (Model # A015DA00031) will be 8517.62.0050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other." The rate of duty will be free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Linda M. Hackett at 646-733-3015.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT B

N022204

February 20, 2008
CLA-2-85:OT:RR:E:NC:N1:109
CATEGORY: Classification
TARIFF NO.: 8517.62.0050

MR. TROY D. CRAGO
IMPORT SPECIALIST
ATICO INTERNATIONAL USA, INC.
501 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33301

RE: The tariff classification of a Bluetooth wireless stereo headphone from China

DEAR MR. CRAGO:

In your letter dated January 19, 2008 you requested a tariff classification ruling.

The merchandise subject to this ruling is a Bluetooth wireless stereo headphone. It is identified within your submission as Model # A015DA00067. The Bluetooth wireless stereo headphone features Bluetooth V2.0 + EDR (Enhanced Data Rate), supports HS, HF, A2DP, & QVRCP profile, 8 hours of talk time, 170 hours of standby time, and has an operating range up to 30 feet. It has a music control that enables the user to play music backward and forward, supports voice dial, and last number redial. An AC adapter and detachable earpiece are included.

The applicable subheading for the Bluetooth wireless stereo headphone (Model # A015DA00067) will be 8517.62.0050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other." The rate of duty will be free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Linda M. Hackett at 646-733-3015.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

ATTACHMENT C

N240329

April 22, 2013

CLA-2-85:OT:RR:NC:N1:109

CATEGORY: Classification

TARIFF NO.: 8517.62.0050

WILLIAM VIRIYA NETRAMAI
GLOBAL TRADE COMPLIANCE
BEATS ELECTRONICS LLC
1601 CLOVERFIELD BLVD., SUITE 5000N
SANTA MONICA, CA 90404

RE: The tariff classification of Bluetooth enabled wireless headphones from an undisclosed country of origin

DEAR MR. NETRAMAI:

In your letter dated March 27, 2013, you requested a tariff classification ruling.

The merchandise in question is referred to as the “Beats Wireless Over Ear Headphone” set (Model # 810-00012-00). The retail package includes the “Beats Wireless Over Ear Headphones,” a USB charging cable, a remote microphone cable, an audio cable, an audio plug adapter, and a uniquely shaped fitted case. The ear cups are cushioned; one ear cup incorporates a microphone, a power/answer/hang-up button, a power LED indicator, a play/pause button, back and next buttons, and volume control buttons. There is a jack located at the base of this ear cup for the audio or microphone cable. The other ear cup incorporates a mini USB jack at the base which is used to charge the item. It is retail packaged upon importation.

The headphones incorporate the “BlueCore5 Multimedia Bluetooth Chip.” This chip allows for wireless two-way communication between the headset and any Bluetooth enabled device. The user can access Bluetooth enabled cellular telephones for wireless two-way communications and/or wirelessly receive streaming audio from an iPod, iPhone, iPad, laptop, or any other Bluetooth enabled device. The buttons on the ear cup let you manage the volume, skip tracks, and answer telephone calls with a single touch.

The applicable subheading for the “Beats Wireless Over Ear Headphone” set (Model # 810-00012-00) will be 8517.62.0050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Machines for the reception, conversion, and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other”. The general rate of duty will be Free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Steven Pollichino at (646) 733-3008.

Sincerely,
THOMAS J. RUSSO
Director
National Commodity Specialist Division

ATTACHMENT D

HQ H317791

CLA-2 OT:RR:CTF:TCM H317791 DSR

CATEGORY: Classification

TARIFF NO.: 8518.30.20

MR. TROY D. CRAGO
IMPORT SPECIALIST
ATICO INTERNATIONAL USA, INC.
501 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33301

WILLIAM VIRIYA NETRAMAI
GLOBAL TRADE COMPLIANCE
BEATS ELECTRONICS LLC
1601 CLOVERFIELD BLVD., SUITE 5000N
SANTA MONICA, CA 90404

RE: Revocation of NY N022195 (February 20, 2008), NY N022204 (February 20, 2008) and NY N240329 (April 22, 2013); Tariff classification of Bluetooth® enabled wireless headphone sets from China and an undisclosed country of origin

DEAR MESSRS. CRAGO AND NETRAMAI:

This letter is in reference to the tariff classification of certain wireless headphones. We have identified three published rulings that need to be reconsidered so that we do not have in force rulings that may be inconsistent with our current views.

In NY N022195 (February 20, 2008) and NY N022204 (February 20, 2008), U.S. Customs and Border Protection (CBP) classified articles identified as Bluetooth® wireless stereo headphones (Model #A015DA00031 and Model #A015DA00067, respectively) in subheading 8517.62.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.” Also, in NY N240329 (April 22, 2013), CBP classified an article identified as the “Beats Wireless Over Ear Headphone” set (“Beats”) in subheading 8517.62.00, HTSUS.

We reviewed the above-referenced rulings and determined that the classifications of the subject articles are incorrect and are therefore revoking them for the reasons set forth herein.

FACTS:

The subject of NY N022195 is described as follows:

This Bluetooth® wireless stereo headphone features Bluetooth® V2.0 + EDR (Enhanced Data Rate), support profiles of hands-free headset A2DP & AVRCP, a LI-ION rechargeable battery, which provides 12 hours of talk time, 10 hours of music time, and 260 hours of standby time, and has an operating range up to 30 feet. It has a built-in microphone, volume control with up/down/mute modes, a music control that enables the user to play music backward and forward, supports voice dial, last number redial, an

LED for line-in-use & battery level check indication, and auto-switching between listening to music and making phone calls. A foldable headband and USB charger is included.

The subject of NY N022204 is described as follows:

The Bluetooth® wireless stereo headphone features Bluetooth® V2.0 + EDR (Enhanced Data Rate), supports HS, HF, A2DP, & QVRCP profile, 8 hours of talk time, 170 hours of standby time, and has an operating range up to 30 feet. It has a music control that enables the user to play music backward and forward, supports voice dial, and last number redial. An AC adapter and detachable earpiece are included.

The subject of NY N240329 is described as follows:

The merchandise in question is referred to as the “Beats Wireless Over Ear Headphone” set (Model # 810–00012–00) The retail package includes a pair of Beats wireless headphones, a USB charging cable, a remote microphone cable, an audio cable, an audio plug adapter, and a uniquely shaped fitted case. The ear cups are cushioned, and one ear cup incorporates a microphone, a power/answer/hang-up button, a power LED indicator, a play/pause button, back and next buttons, and volume control buttons. There is a jack located at the base of this ear cup for the audio or microphone cable. The other ear cup incorporates a mini USB jack at the base which is used to charge the item. It is retail packaged upon importation.

The headphones incorporate the “BlueCore5 Multimedia Bluetooth® Chip.” This chip allows for wireless two-way communication between the headset and any Bluetooth® enabled device. The user can access Bluetooth® enabled cellular telephones for wireless two-way communications and wirelessly receive streaming audio from an iPod, iPhone, iPad, laptop, or any other Bluetooth® enabled device. The buttons on the ear cup let you manage the volume, skip tracks, and answer telephone calls with a single touch.

ISSUE:

Whether the subject articles are classified under heading 8517, HTSUS, which provides for, in pertinent part, apparatus for the reception, conversion and transmission or regeneration of voice, images or other data, or under heading 8518, HTSUS, which provides for, in pertinent part, headphones and earphones, whether or not combined with a microphone.

LAW AND ANALYSIS:

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. If the goods cannot be classified solely based on GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. The HTSUS provisions under consideration in this ruling are as follows:

- 8517** Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof:
- Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):
- 8517.62.00** Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.
- * * *
- 8518** Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof:
- 8518.30 Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers:
- 8518.30.20 Other.

In addition, in interpreting the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989). The EN to heading 85.17 states, in pertinent part, the following:

This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electromagnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-teleggraphy, local and wide area networks.

...

(II) OTHER APPARATUS FOR TRANSMISSION OR RECEPTION OF VOICE, IMAGES OR OTHER DATA, INCLUDING APPARATUS FOR COMMUNICATION IN A WIRED OR WIRELESS NETWORK (SUCH AS A LOCAL OR WIDE AREA NETWORK)

...

(F) Transmitting and receiving apparatus for radio-telephony and radio-teleggraphy.

This group includes:

(1) Fixed apparatus for radio-telephony and radio-teleggraphy (transmitters, receivers and transmitter-receivers). . . .

The EN to heading 85.18 provides, in pertinent part, the following:

This heading covers microphones, loudspeakers, headphones, earphones and audio-frequency electric amplifiers of all kinds presented separately, regardless of the particular purpose for which such apparatus may be designed (e.g., telephone microphones, headphones and earphones, and radio receiver loudspeakers).

The heading also covers electric sound amplifier sets.

...

(C) HEADPHONES AND EARPHONES, WHETHER OR NOT COMBINED WITH A MICROPHONE, AND SETS CONSISTING OF A MICROPHONE AND ONE OR MORE LOUDSPEAKERS

Headphones and earphones are electroacoustic receivers used to produce low-intensity sound signals. Like loudspeakers, described above, they transform an electrical effect into an acoustic effect; the means used are the same in both cases, the only difference being in the powers involved.

The heading covers headphones and earphones, whether or not combined with a microphone, for telephony or telegraphy; headsets consisting of a special throat microphone and permanently-fixed earphones (used, for example, in aviation); line telephone handsets which are combined microphone/speaker sets for telephony and which are generally used by telephone operators; headphones and earphones for plugging into radio or television receivers, sound reproducing apparatus or automatic data processing machines....

Because the subject headphones integrate components that together perform complementary functions,¹ the subject headphone are composite machines, the classification of which is governed by Note 3 to Section XVI, HTSUS. Note 3 states the following:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

The General ENs to Section XVI, provide, in relevant part, as follows:

(VI) MULTI-FUNCTION MACHINES AND COMPOSITE MACHINES

(Section Note 3)

In general, multi-function machines are classified according to the principal function of the machine.

...

Composite machines consisting of two or more machines or appliances of different kinds, fitted together to form a whole, consecutively or simultaneously performing separate functions which are generally complementary and are described in different headings of Section XVI, are also classified according to the principal function of the composite machine.

¹ At the time of importation, all the components contained in the packages of the subject articles are packaged together for retail sale and can be classifiable as sets per GRI 3(b). As such, the products are classifiable in the heading that provides for the component which imparts the essential character of the set, which would be the actual headphones.

...

For the purposes of the above provisions, machines of different kinds are taken to be fitted together to form a whole when incorporated one in the other or mounted one on the other, or mounted on a common base or frame or in a common housing.

Here, the subject headphones incorporate Bluetooth® transceivers that allow for wireless two-way communication between the headphones and any Bluetooth® enabled device. For instance, the headphones' users can access Bluetooth® enabled cellular telephones for wireless two-way communications and wirelessly receive streaming audio from any other Bluetooth® enabled device. In the case of the Beats headphones, the user can also choose to connect the headphones directly to an audio source via an audio or microphone cable. Each headphone under consideration also possesses buttons that allow a user to manage functions such as incoming audio volume, audio track control and answering telephone calls.

The transmission and reception functions of the Bluetooth® transceivers in the headphones exist to accomplish the above tasks and essentially act in the same manner as stereo wires, except that the transceivers permit the connections to be wireless. *See* NY N302512, dated February 9, 2019 (where CBP classified wired headphones with similar control functionality under heading 8518, HTSUS). In this respect, the wireless functionality and controls provided by the Bluetooth connection do not give rise to a product with the principal function of transmitting and/or receiving data. Rather the transmission and reception functions inherent to the subject headphones are intermediate steps or ancillary features that complement the headphones' ultimate principal function, which is to convert an incoming signal into sound – that is, to function as headphones combined with a microphone. Therefore, we find that the subject headphone sets of NY N022195, NY N022204 and NY N240329 are properly classified as headphones of heading 8518, HTSUS.

HOLDING:

By application of GRIs 1 (Note 3 to Section XVI), 3(b) and 6, the subject headphone sets are classified in heading 8518, HTSUS, specifically in sub-heading 8518.30.20, HTSUS, which provides for “Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof: Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers: Other.” The column one, general rate of duty is free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N022195, NY N022204 and NY N240329 are revoked in accordance with this decision.

Sincerely,
YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

COUNTRY OF ORIGIN MARKING REQUIREMENTS FOR CONTAINERS OR HOLDERS

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 25, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 87 FR Page 39108) on June 30, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address

one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Country of Origin Marking Requirements for Containers or Holders.

OMB Number: 1651-0057.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Section 304 of the Tariff Act of 1930, as amended, 19 U.S.C. 1304, requires each imported article of foreign origin, or its container, to be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article or container permits, with the English name of the country of origin. The marking informs the ultimate purchaser in the United States of the country of origin of the article or its container. The marking requirements for containers or holders of imported merchandise are provided for by 19 CFR 134.22(b).

The respondents to these requirements collection are members of the trade community who are familiar with CBP requirements and regulations.

Type of Information Collection: Country of Origin Marking.

Estimated Number of Respondents: 250.

Estimated Number of Annual Responses per Respondent: 40.

Estimated Number of Total Annual Responses: 10,000.

Estimated Time per Response: 15 seconds.

Estimated Total Annual Burden Hours: 41.

Dated: October 21, 2022.

SETH D. RENKEMA
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 26, 2022 (85 FR 64808)]

DELIVERY TICKET

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 25, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 36867) on June 21, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Delivery Ticket.

OMB Number: 1651-0081.

Form Number: CBP Form 6043.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 6043, *Delivery Ticket*, is used to document transfers of imported merchandise between parties. This form collects information such as the name and address of the consignee; the name of the importing carrier; lien information; the location of where the goods originated and where they were delivered; and information about the imported merchandise. CBP Form 6043 is completed by warehouse proprietors, carriers, Foreign Trade Zone operators and other trade entities involved in transfers of imported merchandise. This form is authorized by 19 U.S.C. 1551a and 1565, and provided for by 19 CFR 4.34, 4.37 and 19.9. It is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

The respondents to this information collection are members of the trade community who are familiar with CBP regulations.

Type of Information Collection: Delivery Ticket (Form 6043).

Estimated Number of Respondents: 1,156.

Estimated Number of Annual Responses per Respondent: 200.

Estimated Number of Total Annual Responses: 231,200.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 57,800.

Dated: October 21, 2022.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 26, 2022 (85 FR 64809)]

CUSTOMS AND BORDER PROTECTION RECORDKEEPING REQUIREMENTS

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension without change of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 25, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to <http://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, telephone number 202-325-0056, or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 35565) on June 10, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the

public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Customs and Border Protection Recordkeeping Requirements.

OMB Number: 1651-0076.

Form Number: N/A

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the recordkeeping requirements.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The North American Free Trade Agreement Implementation Act, Title VI, known as the Customs Modernization Act (Mod Act) amended Title 19 U.S.C. 1508, 1509 and 1510 by revising Customs and Border Protection (CBP) laws related to recordkeeping, examination of books and witnesses, regulatory audit procedures and judicial enforcement. Specifically, the Mod Act expanded the list of parties subject to CBP recordkeeping requirements; distinguished between records which pertain to the entry of merchandise and financial records needed to substantiate the correctness of information contained in entry documentation; and identified a list of records which must be maintained and produced upon request by CBP. The information and records are used by CBP to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value, and rate of duty applicable to the entered goods. The Mod Act recordkeeping requirements are provided for

by 19 CFR 163. Instructions are available at: <http://www.cbp.gov/document/publications/recordkeeping>.

The respondents to this information collection are members of the trade community who are familiar with CBP regulations.

Type of Information Collection: Mod. Act Recordkeeping.

Estimated Number of Respondents: 5,459.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 5,459.

Estimated Time per Response: 1,040 hours.

Estimated Total Annual Burden Hours: 5,677,360.

Dated: October 21, 2022.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 26, 2022 (85 FR 64805)]

APPLICATION-PERMIT-SPECIAL LICENSE UNLADING-LADING-OVERTIME SERVICES

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 25, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@xsp0;cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 31252) on May 23, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the

following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application-Permit-Special License Unlading-Lading-Overtime Services.

OMB Number: 1651-0005.

Form Number: CBP Form 3171.

Current Actions: Revision.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: The Application-Permit-Special License Unlading-Lading-Overtime Services (U.S. Customs and Border Protection (CBP) Form 3171) is used by commercial carriers and importers as a request for permission to unlade imported merchandise, baggage, or passengers. It is also used to request overtime services from CBP officers in connection with lading or unlading of merchandise, or the entry or clearance of a vessel, including the boarding of a vessel for preliminary supplies, ship's stores, sea stores, or equipment not to be re-laden. CBP Form 3171 is provided for by 19 CFR 4.10, 4.30, 4.39, 4.91, 10.60, 24.16, 122.38, 123.8, 146.32 and 146.34.

This form is accessible at: <http://www.cbp.gov/newsroom/publications/forms?title=3171>.

New Change

This form is anticipated to be submitted electronically as part of the maritime forms automation project through the Vessel Entrance and Clearance System (VECS), which will eliminate the need for any paper submission of any vessel entrance or clearance requirements under the above referenced statutes and regulations. VECS will still

collect and maintain the same data but will automate the capture of data to reduce or eliminate redundancy with other data collected by CBP.

Type of Information Collection: Form 3171.

Estimated Number of Respondents: 2,624.

Estimated Number of Annual Responses per Respondent: 72.

Estimated Number of Total Annual Responses: 188,928.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 25,190 hours.

Dated: October 21, 2022.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 26, 2022 (85 FR 64806)]

HOLDERS OR CONTAINERS WHICH ENTER THE UNITED STATES DUTY FREE

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 25, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 34283) on June 6, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the

following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Holders or Containers Which Enter the United States Duty Free.

OMB Number: 1651-0035.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Subheading 9803.00.50 of the Harmonized Tariff Schedule of the United States (HTSUS), codified as 19 U.S.C. 1202, provide for the release without entry or the payment of duty of certain substantial holders or containers pursuant to the provisions of 19 CFR 10.41b.

Section 19 CFR 10.41b eliminates the need for an importer to file entry documents by instead requiring, among other things, the marking of the containers or holders to indicate the HTSUS numbers that provide for duty-free treatment of the containers or holders.

For U.S. manufactured serially numbered holders or containers which may be released without entry or the payment of duty under 9801.00.10 HTSUS, 19 CFR 10.41b requires the owner to place the following markings on the holder or container: 9801.00.10, HTSUS (unless the holder or container has a permanently attached metal tag or plate showing, among other things, the name and address of the U.S. manufacturer); the name of the owner; and the serial number assigned by the owner. For serially numbered holders or containers of foreign manufacture for which may be released without entry or

payment of duty under 9803.00.50 HTSUS, 19 CFR 10.41b requires the owner to place markings containing the following information: 9803.00.50 HTSUS; the district and port code numbers of the port of entry; the entry number; the last two digits of the fiscal year of entry covering the importation of the holders and containers on which duty was paid; the name of the owner; and the serial number assigned by the owner.

This collection of information applies to the importing and trade community which is familiar with import procedures and with the CBP regulations.

Type of Information Collection: Holders/Containers Entering U.S. Duty-Free

Estimated Number of Respondents: 20.

Estimated Number of Annual Responses per Respondent: 18.

Estimated Number of Total Annual Responses: 360.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 90.

Dated: October 21, 2022.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 26, 2022 (85 FR 64807)]

DECLARATION FOR FREE ENTRY OF UNACCOMPANIED ARTICLES (CBP FORM 3299)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 28, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 37882) on June 24, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the

following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Declaration for Free Entry of Unaccompanied Articles.

OMB Number: 1651-0014.

Form Number: CBP Form 3299.

Current Actions: This submission is being made to extend the expiration date with no changes to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses and individuals.

Abstract: 19 U.S.C. 1498 provides that when personal and household effects enter the United States but do not accompany the owner or importer on his/her arrival in the country, a declaration is made on CBP Form 3299, Declaration for Free Entry of Unaccompanied Articles. The information on this form is needed to support a claim for duty-free entry for these effects. This form is provided for by 19 CFR 148.6, 148.52, 148.53 and 148.77. CBP Form 3299 is accessible at: https://www.cbp.gov/document/forms/form-3299-declaration-free-entry-unaccompanied-articles?language_content_entity=en.

Type of Information Collection: Form 3299.

Estimated Number of Respondents: 150,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 150,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 112,500.

Dated: October 24, 2022.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 27, 2022 (85 FR 65095)]

USER FEES (CBP FORM 339A, 339C AND 339V)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 28, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This proposed information collection was previously published in the **Federal Register** (87 FR 39105) on June 30, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: User Fees.

OMB Number: 1651-0052.

Form Number: CBP Form 339A, 339C and 339V.

Current Actions: This submission is being made to extend the expiration date with a change to the annual burden hours previously reported. There is no change to the information collected.

Type of Review: Extension (with change).

Affected Public: Carriers.

Abstract: The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99-272, 100 Stat. 82; 19 U.S.C. 58c), as amended, authorizes the collection of user fees by U.S. Customs and Border Protection (CBP). The collection of these fees requires submission of information from the party remitting the fees to CBP. This collection of information is provided for by 19 CFR 24.22. In certain cases, this information is submitted on one of three forms including the CBP Form 339A for payment upon arrival or prepayment of the annual user fee for a private aircraft (19 CFR 24.22(e)(1) and (2)), CBP Form 339C for prepayment of the annual user fee for a commercial vehicle (19 CFR 24.22(c)(3)), and CBP Form 339V for payment upon arrival or prepayment of the annual user fee for a private vessel (19 CFR 24.22(e)(1) and (2)). All forms can be accessed at: https://www.cbp.gov/newsroom/publications/forms?title_1=339.

The information on these forms may also be filed electronically at: <https://dtops.cbp.dhs.gov/>.

Similarly, as authorized by the COBRA, as amended, CBP collects fees from each carrier or operator using an express consignment carrier facility (ECCF) or a centralized hub facility as provided in 19

CFR 24.23(b)(4). The payment must be made to CBP on a quarterly basis and must cover the individual fees for all subject transactions that occurred during a calendar quarter. 19 CFR 24.23(b)(4)(i). The information set forth in 19 CFR 24.23(b)(4)(iii)(B) must be included with the quarterly payment (ECCF Quarterly Report). In cases of overpayments, carriers or operators using an ECCF or a centralized hub facility may send a request to CBP for a refund in accordance with 19 CFR 24.23(b)(4)(iii)(C). This request must specify the grounds for the refund.

In addition, CBP requires a prospective ECCF to include a list of all carriers or operators intending to use the facility, as well as other information requested in the application for approval of the ECCF in accordance with 19 CFR 128.11(b)(2). ECCFs are also required to provide to CBP at the beginning of each calendar quarter, a list of all carriers or operators currently using the facility and notify CBP whenever a new carrier or operator begins to use the facility or whenever a carrier or operator ceases to use the facility in accordance with 19 CFR 128.11(b)(7)(iv).

Type of Information Collection: Form 339A.

Estimated Number of Respondents: 35,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 35,000.

Estimated Time per Response: 16 minutes.

Estimated Total Annual Burden Hours: 9,333.

Type of Information Collection: Form 339C Vehicles.

Estimated Number of Respondents: 80,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 80,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 26,667.

Type of Information Collection: Form 339V.

Estimated Number of Respondents: 16,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 16,000.

Estimated Time per Response: 16 minutes.

Estimated Total Annual Burden Hours: 4,267.

Type of Information Collection: ECCF Quarterly Report.

Estimated Number of Respondents: 18.

Estimated Number of Annual Responses per Respondent: 4.

Estimated Number of Total Annual Responses: 72.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 144.

Type of Information Collection: ECCF Application and List of Couriers.

Estimated Number of Respondents: 3.

Estimated Number of Annual Responses per Respondent: 4.

Estimated Number of Total Annual Responses: 12.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 6.

Type of Information Collection: ECCF Refund Request.

Estimated Number of Respondents: 0.

Estimated Number of Annual Responses per Respondent: 0.

Estimated Number of Total Annual Responses: 0.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 0.

Dated: October 24, 2022.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 27, 2022 (85 FR 65095)]

EXPORTATION OF USED SELF-PROPELLED VEHICLES

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 28, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 39107) on June 30, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Exportation of Used Self-Propelled Vehicles.

OMB Number: 1651-0054.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the collection and a decrease in burden.

Type of Review: Extension (with change).

Affected Public: Individuals and Businesses.

Abstract: U.S. Customs and Border Protection (CBP) regulations require a person attempting to export a used self-propelled vehicle to furnish documentation to CBP at the port of export. Exportation of a vehicle is permitted only upon compliance with these requirements. The required documentation includes, but is not limited to, a Certificate of Title or a Salvage Title, the Vehicle Identification Number (VIN), a Manufacturer's Statement of Origin, etc. CBP will accept originals or certified copies of the Certificate of Title. The purpose of this information is to help ensure that stolen vehicles or vehicles associated with other criminal activity are not exported.

Collection of this information is authorized by 19 U.S.C. 1627a, which provides CBP with authority to impose export reporting requirements on all used self-propelled vehicles. It is also authorized by Title IV, Section 401 of the Anti-Car Theft Act of 1992, 19 U.S.C. 1646c, which requires all persons exporting a used self-propelled vehicle to provide to CBP, at least 72 hours prior to export, the VIN and proof of ownership of each automobile. This information collection is provided for by 19 CFR part 192. Further guidance regarding

these requirements is provided at: <https://www.cbp.gov/trade/basic-import-export/export-docs/motor-vehicle>.

New Change: Respondents are now able to submit supporting documentation through the Document Image System (DIS).

Type of Information Collection: Exportation of Self-Propelled Vehicles.

Estimated Number of Respondents: 750,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 750,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 62,500.

Dated: October 24, 2022.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 27, 2022 (85 FR 65094)]

CANADIAN BORDER BOAT LANDING PERMIT (CBP FORM I-68)

AGENCY:U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 28, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 34282) on June 6, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the

following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Canadian Border Boat Landing Permit.

OMB Number: 1651-0108.

Form Number: CBP Form I-68.

Current Actions: This submission is being made to extend the expiration date with a decrease to the burden hours. There is no change to the information collected.

Type of Review: Extension (with change).

Affected Public: Individuals or Households.

The Canadian Border Boat Landing Permit, U.S. Customs and Border Protection (CBP) Form I-68, generally allows select individuals entering the United States along the northern border by small¹ pleasure boats to report their arrival and make entry without having to travel to a designated port of entry for an inspection by a CBP officer. The information collected on CBP Form I-68 allows eligible individuals to be inspected in person only once during the boating season, rather than each time they make an entry. United States citizens, Lawful Permanent Residents of the United States, Canadian citizens, and Landed Residents of Canada who are nationals of the Visa Waiver Program countries listed in 8 CFR 217.2(a) are eligible to apply for the permit.

CBP has developed a smart phone application known as ROAM that will in certain circumstances allow travelers participating in the I-68 program to report their arrival in the United States through the ROAM application, instead of by telephone. The ROAM app, implementing the I-68 program, will allow CBP officers to remotely con-

¹ Weighing less than five net tons.

duct traveler interviews with a phone's video chat capability, and replace other technologies used for remote inspections that are obsolete or inefficient.

This information collection is provided for by 8 CFR 235.1(g) and Section 235 of Immigration and Nationality Act. CBP Form I-68 is accessible at: https://www.cbp.gov/newsroom/publications/forms?title_1=I-68.

Type of Information Collection: I-68 Paper Version.

Estimated Number of Respondents: 30.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 30.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 5 hours.

Type of Information Collection: I-68 Roam App.

Estimated Number of Respondents: 20,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 20,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 1,666 hours.

Dated: October 24, 2022.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 27, 2022 (85 FR 65097)]

APPLICATION TO ESTABLISH A CENTRALIZED EXAMINATION STATION

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 28, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 36867) on June 21, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the

following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application to Establish a Centralized Examination Station.

OMB Number: 1651-0061.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: A Centralized Examination Station (CES) is a privately operated facility where merchandise is made available to CBP officers for physical examination. If a port director decides that a CES is needed, he or she solicits applications to operate a CES. The information contained in the application is used to determine the suitability of the applicant's facility; the fairness of fee structure; and the knowledge of cargo handling operations and of CBP procedures and regulations. The names of all principals or corporate officers and all employees who will come in contact with uncleared cargo are also to be provided so that CBP may perform background investigations. The CES application is provided for by 19 CFR 118.11 and is authorized by 19 U.S.C. 1499, Tariff Act of 1930.

CBP port directors solicit these applications by using port information bulletins, local newspapers, and/or the internet. This collection of information applies to the importing and trade community, which is familiar with import procedures and with the CBP regulations.

Type of Information Collection: Application for CES.

Estimated Number of Respondents: 50.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 50.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 100.

Dated: October 24, 2022.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 27, 2022 (85 FR 65097)]

U.S. Court of International Trade

Slip Op. 22–119

OMAN FASTENERS, LLC, et al., Plaintiffs, v. UNITED STATES, et al.,
Defendants.

Before: Jennifer Choe-Groves, Judge
M. Miller Baker, Judge
Timothy C. Stanceu, Judge
Consol. Court No. 20–00037

[Resolving a dispute between the parties on bonding in lieu of deposits for potential duty liability stemming from a Presidential Proclamation]

Dated: October 21, 2022

Andrew Caridas, Perkins Coie, LLP, of Washington, D.C., for plaintiff Oman Fasteners, LLC. With him on the submissions were *Michael P. House*, *Shuaiqi Yuan*, *Jon B. Jacobs*, and *Brenna D. Duncan*.

Meen Geu Oh, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for defendants. With him on the submission was *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Tara K. Hogan*, Assistant Director.

OPINION AND ORDER

Stanceu, Judge:

Plaintiff Oman Fasteners, LLC (“Oman Fasteners” or “movant”) seeks relief from defendants’ refusal to allow bonding in lieu of cash deposits for potential liability for duties under a Presidential Proclamation, Proclamation No. 9980, *Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States*, 85 Fed. Reg. 5,281 (Exec. Office of the President Jan. 29, 2020) (“Proclamation 9980”), which imposed duties on various imported products made of aluminum or steel, including steel fasteners. Granting Oman Fasteners’s motion in part and denying it in part, we require defendants to exclude Oman Fasteners from a requirement to post cash deposits for potential duty liability under Proclamation 9980 until such time as defendants obtain a further order from this Court or Oman Fasteners voluntarily enters into an agreement with defendants that modifies the terms of this Opinion and Order.

I. BACKGROUND

In *PrimeSource Bldg. Prods., Inc. v. United States*, 45 CIT __, 505 F. Supp. 3d 1352 (2021) (“*PrimeSource*”), we invalidated Proclamation 9980. We held that Proclamation 9980, which imposed duties of 25%

ad valorem on various imported products made of steel, including nails and other fasteners, was issued contrary to time limitations in Section 232 of the Trade Expansion Act of 1962, 19 U.S.C. § 1862 (“Section 232”),¹ and therefore beyond the authority to adjust tariffs that Section 232 delegated to the President.

In *Oman Fasteners, LLC v. United States*, 45 CIT __, 520 F. Supp. 3d 1332 (2021) (“*Oman Fasteners I*”), we awarded plaintiffs summary judgment on a claim essentially identical to that asserted in the *PrimeSource* litigation. In the judgment, we ordered defendants to liquidate the entries affected by this litigation without assessment of the 25% Section 232 duties, discontinue the then-existing obligation of plaintiffs to post bonding for such duties, and refund with interest any deposits of Section 232 duties that may have been made. Judgment 1–2 (June 10, 2021), ECF No. 108.

In our October 15, 2021 Opinion and Order in *Oman Fasteners, LLC v. United States*, 45 CIT __, 542 F. Supp. 3d 1399 (2021) (“*Oman Fasteners II*”), we took several actions, on defendants’ motion, following their appeal of our judgment in *Oman Fasteners I*. We stayed our order to liquidate the affected entries and refund with interest any deposits of Section 232 duties, enjoined the liquidation of the affected entries, and ordered defendants to confer with Oman Fasteners and co-plaintiffs Huttig Building Products, Inc. and Huttig, Inc. (collectively, “Huttig”) “with the objective of reaching, and entering into, an agreement with Oman and an agreement with Huttig on monitoring and such bonding for entries of merchandise within the scope of Proclamation 9980 that have occurred, and will occur, on or after June 10, 2021,” the date of the entry of judgment, “as is reasonably necessary to secure potential liability for duties and fees.” *Oman Fasteners II*, 45 CIT at __, 542 F. Supp. 3d at 1409.

In taking the actions to allow defendants to protect potential revenue from Section 232 duties pending the appeal of our judgment in *Oman Fasteners I*, we stated that the opinion of the Court of Appeals for the Federal Circuit (“Court of Appeals”) in *Transpacific Steel LLC v. United States*, 4 F.4th 1306 (Fed. Cir. 2021), “causes us to conclude that defendants have made a sufficiently strong showing that they will succeed on the merits on appeal.” *Oman Fasteners II*, 45 CIT at __, 542 F. Supp. 3d at 1403. We concluded that defendants demonstrated, further, the likelihood of irreparable harm in the absence of the relief sought, explaining that the “harm is the loss of the authority, provided for by statute and routinely exercised by Customs [and Border Protection (“Customs” or “CBP”)] in every import transaction, to require and maintain such bonding as it determines is reasonably

¹ All citations to the United States Code herein are to the 2018 edition.

necessary to protect the revenue of the United States.” *Id.*, 45 CIT at ___, 542 F. Supp. 3d at 1405–06. We also concluded that the remaining equitable factors, balance of the hardships and the public interest, also favored allowing the government to take steps to protect the potential revenue in the circumstance presented. *Id.*, 45 CIT at ___, 542 F. Supp. 3d at 1407–08.

Following our decision in *Oman Fasteners II*, defendants reached agreements with Oman Fasteners and with the other plaintiffs in this case on enhanced bonding to provide security for potential Section 232 duties under Proclamation 9980. But earlier this year, the government informed the court that its interest in potential Section 232 duties on Oman Fasteners’s entries occurring after the end of February 2022 was not currently being protected by movant’s bonding. Defs.’ Suppl. Notice Concerning the Parties’ Inability to Reach Agreement on Continuous Bonding, and Request for Continuous Bonding 1–2 (Mar. 18, 2022), ECF No. 129 (“Defs.’ Request”); see also Joint Notice Regarding Court’s Order Concerning Monitoring and Continuous Bonding 1–3 (Jan. 5, 2022), ECF Nos. 127 (public), 128 (conf.).² To resolve the dispute between Oman Fasteners and defendants, we issued, on April 15, 2022, an Opinion and Order in which we directed as follows:

1. Oman Fasteners shall make duty deposits for potential Section 232 duty liability on all consumption entries affected by this litigation that are made after the date of this Opinion and Order and during the remainder of the stay pending defendants’ appeal of this Court’s judgment in this litigation.
2. Oman Fasteners, should it so choose, may discontinue the duty deposits ordered herein after reaching agreement with defendants on the resumption of bonding to secure the protection of the revenue for potential Section 232 duty liability and putting such bonding in place.
3. Should defendants believe that any entries by Oman Fasteners of merchandise affected by this litigation that were made during the period from February 28, 2022 to and including the date of this Opinion and Order are not covered by a continuous bond sufficient to avoid a significant risk to the revenue, defendants shall confer with Oman Fasteners to discuss an appropriate resolution of this issue and shall file a status report on the outcome of any such resolution or discussions.

² The information presented in this Opinion and Order was obtained from the public versions of the documents submitted to the court.

Oman Fasteners, LLC v. United States, 46 CIT ___, 567 F. Supp. 3d 1364, 1368–69 (2022) (“*Oman Fasteners III*”).

Now before the court is Oman Fasteners’s Emergency Motion to Compel Defendants’ Compliance with the Court’s April 15, 2022 Order (Sept. 19, 2022), ECF Nos. 136 (conf.), 137 (public) (“Pl.’s Mot.”). Defendant filed a response in opposition on September 26, 2022. Defs.’ Resp. to Pl.’s Emergency Mot. to Compel Defs.’ Compliance with Court Order, ECF Nos. 145 (public), 146 (conf.) (“Defs.’ Resp.”). With leave of the court, Oman Fasteners filed a reply. Oman Fasteners’ Reply in Supp. of Emergency Mot. to Compel Defs.’ Compliance with the Court’s April 15, 2022 Order (Sept. 28, 2022), ECF Nos. 143 (conf.), 144 (public) (“Pl.’s Reply”).

II. DISCUSSION

The following facts are taken from the parties’ recent submissions and are not in dispute unless otherwise noted.

A. The Parties Agreed on an Exclusion from the Section 232 Cash Deposit Requirement in Return for Bonding in an Agreed-Upon Amount

Oman Fasteners began making cash deposits for its potential duty liability under Proclamation 9980 following the court’s April 15, 2022 ruling in *Oman Fasteners III*. Pl.’s Mot. 6. The developments leading up to the current dispute between the parties began on August 5, 2022, when, according to movant, Customs informed Oman Fasteners that it considered Oman Fasteners’s then-current continuous bond to have an insufficient limit of liability and that a new, higher bond must be put into place by September 5, 2022. *Id.* In responding, Oman Fasteners attempted to get Customs to agree to allow bonding that would provide security for, in addition to other potential duty liability, potential Section 232 duties under Proclamation 9980: “Prompted by the need to increase its customs bond in any event, and in order to prevent material future harm from continued payment of cash deposits, Oman Fasteners decided to resume bonding of potential Section 232 liability.” *Id.*

On Wednesday, August 17, 2022, movant’s counsel sent an email message to counsel for defendants stating that Oman Fasteners “would like to resume bonding 232 entries pursuant to the CIT’s April 15, 2022 order” and is “prepared to put up a . . . continuous bond to secure the 232 liability, and to monitor our entries and terminate and replace that bond once it is exhausted.” Pl.’s Mot., Ex. A at 3–4 (confidential amount of proposed bond omitted). The government’s counsel responded expeditiously, on Friday, August 19, 2022, per the

request of movant's counsel. In that response, also memorialized by email, defendant's counsel: (1) disclosed that he had consulted with Customs; (2) informed movant's counsel that Customs agreed to accept a bond in the amount proposed by Oman Fasteners; and (3) informed movant's counsel that, in light of the new bond, Oman Fasteners, effective August 25, 2022, would have an exclusion from the requirement to post cash deposits for Section 232 duty liability.³ The movant states that it proceeded, that same day, with the application for a bond in the agreed-upon amount, thus accepting the terms defendants' counsel had communicated. *Id.*, Ex. A at 1.

The following week, the same attorney for the government who, on Friday, August 19, represented defendants in entering into an agreement with the attorney for Oman Fasteners, informed movant's attorney that Customs would refuse to honor that agreement.⁴ That refusal continues to the present.

B. Defendants Have Not Honored the Agreement They Made with Oman Fasteners on August 19, 2022

Defendants admit that an agreement was reached on Friday, August 19, 2022. Defs.' Resp. 8 ("In the short time it had been afforded to respond, CBP agreed (at the deadline) to allow Oman Fasteners to post its . . . bond and thereby resume being excluded from paying Section 232 duty deposits." (confidential amount of agreed-upon bond omitted)). But according to defendants, "[t]hat agreement was a regrettable mistake," explaining that CBP was unable to "consult with important stakeholders" within Customs. *Id.* The government also acknowledges that upon its attorney's communicating to movant's

³ The response of the attorney for defendants communicated terms of an agreement, as follows: "First, CBP is fine with OF [Oman Fasteners's] posting a . . . bond, with the understanding that CBP expects that the importer will exhaust this bond 83 days after the proposed bond effective date, at which point CBP will be able to issue a new bond sufficiency notice." Oman Fasteners's Emergency Mot. to Compel Defs.' Compliance with the Court's April 15, 2022 Order, Ex. A at 2 (Sept. 19, 2022), ECF Nos. 136 (conf.), 137 (public) ("Pl.'s Mot.") (confidential amount of new bond deleted). The reference to "the proposed bond effective date" apparently was a reference to September 5, 2022. Counsel for the government also informed movant's counsel that Customs will arrange for resumption of the exclusion from the Section 232 cash deposit requirement: "Second, CBP says the exclusion number . . . will be re-activated on Thursday, August 25." *Id.* (confidential data omitted).

⁴ The government's attorney's first communication following the making of the agreement, an email message sent on Monday, August 22, 2022, stated that it ". . . looks like CBP is not thrilled about the amount of the bonding OF is proposing given how quickly it may be exhausted based on running practice. I have a call w/them tomorrow PM but I suspect they will insist that OF get a higher bond amount." Pl.'s Mot., Ex. A at 1. This email mischaracterized the new bond amount as one that Oman Fasteners was "proposing" even though the same attorney had communicated CBP's acceptance of movant's offer the previous Friday. Movant's counsel responded by email that "[g]iven the tight timeline in CPB's deficiency notice, we already submitted the paperwork on Friday for the new bond, so I don't think we can change that now. We relied on CBP's representations below to become compliant within CBP's deadlines." *Id.*

attorney, on that Friday, the terms by which Customs would allow an exclusion from the Section 232 cash deposit requirement, “Oman Fasteners then put in the paperwork to effectuate that bond.” *Id.*

In a telephone conference on Tuesday, August 23, 2022, the government attorney who had entered into the agreement the previous Friday informed movant’s attorney that Customs now considered a bond in the agreed-upon amount to be too small. During that week, the parties’ counsels discussed the question of whether a bond with a limit of liability much higher—and nearly double—the earlier, agreed-upon amount would suffice. The government’s counsel did not promise that Customs would so agree but indicated that the significantly larger bond would be, or might be, more acceptable. Pl.’s Mot. 9; Defs.’ Resp. 9–10.

Oman Fasteners was able to obtain the new, much larger bond from its surety. Regardless, defendants refused to allow Oman Fasteners to have the benefit of the previously-agreed-upon exclusion from the Section 232 cash deposit requirement, even in return for movant’s posting a bond in the new, substantially higher, amount.

The terms of the agreement are clear from the email messages. In return for movant’s submitting a new bond in the previously agreed upon, i.e., lower, amount, the parties agreed that Oman Fasteners would not be required to make cash deposits for potential Section 232 duty liability, effective Thursday, August 25, 2022 and continuing until Customs issues a new “bond sufficiency notice” following a determination on a future replacement for that new bond (which Customs expected it would issue 83 days after September 5, 2022). Pl.’s Mot., Ex. A at 2. Explicitly, or at least implicitly by conduct, Oman Fasteners accepted those terms, having immediately begun the application process for the bond. But defendants refused to allow a bond in that lower amount to be tendered or to go into effect in return for a continuing exclusion from the Section 232 duty deposit requirement, let alone an exclusion (as promised) that would last until the future issuance of a notice of a bond sufficiency determination.⁵ Defendants’ response to the pending motion informed the court that “CBP thus intends to turn off the exclusion” from the requirement to post section 232 cash deposits “on September 29, 2022” and

⁵ Defendants state that their counsel, on August 30, 2022, “explained that although CBP intended to honor a bonding arrangement up to the amount of its first agreement, it would not allow the arrangement to continue up to the full amount of the second bond that Oman Fasteners had unilaterally installed.” Defs.’ Resp. 12 (footnote omitted). Whatever may have occurred, it appears that CBP’s intention has been mooted by defendants’ termination of any exclusion from the cash deposit requirement. *Id.* at 12 n.4. Moreover, counsel for the government announced a further reduction from the previously-agreed bond amount that would be allowed for any such exclusion. *Id.*

that “[f]rom there, Oman Fasteners must pay estimated Section 232 duty deposits on its subject entries.” Defs.’ Resp. 12 n.4.

In summary, defendants refused to honor their agreement with Oman Fasteners, which was reached through the unambiguous written communications of defendants’ counsel. The terms of that agreement precluded defendants from requiring Section 232 cash deposits pending issuance of a notice of a future bond sufficiency determination. Defendants required those deposits anyway, even rejecting Oman Fasteners’s tender of a continuous bond for nearly double the bond amount upon which the parties originally agreed.

C. Defendants Now Must Allow Oman Fasteners an Exclusion from the Obligation to Deposit Potential Section 232 Duties

Defendants’ current position is that “[a]ny relief that Oman Fasteners’ [*sic*] requests should be denied.” Defs.’ Resp. 17. The court disagrees. For its current position, Oman Fasteners “requests that the Court order Defendants to honor the full amount of Oman Fasteners’ current Section 232 bond and permit Oman Fasteners to continue bonding for its potential Section 232 liability after exhaustion of the current bond.” Pl.’s Reply 8. As discussed below, the court agrees in part and disagrees in part.

As the court has recounted, this dispute began when Customs notified Oman Fasteners on August 5, 2022, that its current continuous bond was insufficient. Pl.’s Mot. 6. At that time, Oman was making cash deposits for its potential Section 232 liability, and it appears, therefore, that the agency’s bond insufficiency determination was not based on potential Section 232 liability. At present, the only continuous bond that is available is the bond for the larger, i.e., nearly double, amount. As might be expected, obtaining that larger bond required Oman Fasteners to post additional collateral. Pl.’s Reply 7 (stating that the full amount of the collateral for the new bond “is committed, and Oman Fasteners cannot recover it from its surety until all entries covered by the bond are liquidated—years from now”). It is reasonable to expect that the current, larger bond involves a larger premium as well. Thus, obtaining a larger bond than Customs originally agreed to—potential Section 232 liability aside—resulted in significant additional cost to Oman Fasteners. The apparent status quo is that the new bond, i.e., the bond in the largest amount the parties apparently have discussed, is in effect, but an exclusion from the Section 232 cash deposit requirement is not.

The court’s April 15, 2022 Opinion and Order directed Oman Fasteners to make cash deposits in the absence of an agreement with defendants on bonding to secure potential Section 232 duty liability.

On August 19, 2022, the parties reached just such an agreement, which defendants have refused to honor. The reasons the government offers for this refusal are not convincing.

Defendants attempt to defend their current position by arguing, first, that the liability limit on the new bond “was not an amount that CBP had ever agreed upon.” Defs.’ Resp. 12. That was technically true: the new bond was in an amount *almost double* the amount. But defendants’ position would have the court ignore the obvious fact—which defendants do not contest—that defendants already had agreed to allow exclusion from Section 232 duty deposits in return for a *much smaller* (and less expensive) bond. Oman Fasteners obtained the new, higher bond, on an expedited basis, only because defendants did not honor the agreement they had made regarding the earlier bond amount. The court, therefore, rejects defendants’ first argument.

Defendants argue, second, that Oman Fasteners should not have the benefit of any exclusion from cash deposits because “Oman Fasteners has not honored its bonding arrangement with CBP, and it cannot demand a continuation of that arrangement in light of its past, and still uncorrected, conduct.” *Id.* at 17. According to defendants, “Oman Fasteners has no right to claim that it should be entitled to revive a bonding arrangement when it has persistently under-bonded relative to its obligation.” *Id.* at 14. In support of its argument that “Oman Fasteners has persistently under-bonded relative to its obligations, and it now presents a substantial risk to the public fisc,” defendants offer a table showing what they maintain are unpaid Section 232 duties and amounts left unsecured. *Id.* at 6. For its part, Oman Fasteners strongly disagrees, arguing that it substantially has complied with its bonding obligation. Pl.’s Reply 2–5.

Rather than address all the objections to Oman Fasteners’s motion defendants have raised based on their factual assertions (which Oman Fasteners disputes), the court considers it sufficient to note that the data in defendants’ table reflects a time period that predates, significantly, the June 10, 2021 date on which the court entered judgment in favor of Oman Fasteners. That judgment ended, for the time being, movant’s obligation to post bonds for Section 232 duty liability. Judgment 1–2 (June 10, 2021), ECF No. 108 (“[i]t is hereby ORDERED . . . that plaintiffs are no longer obligated to post a bond to cover duties enacted pursuant to Proclamation 9980”). The argument defendants base on the data in their table—regardless of whether those data are factual—is misleading because it does not recognize that the directive as to bonding the court included in its October 15, 2021 Opinion and Order was confined to post-judgment

entries. *Oman Fasteners II*, 45 CIT at ___, 542 F. Supp. 3d at 1409 (directing that the parties “confer . . . with the objective of reaching, and entering into, an agreement . . . on monitoring and such bonding for entries of merchandise within the scope of Proclamation 9980 that have occurred, and will occur, *on or after June 10, 2021*”) (emphasis added). The court, therefore, rejects defendants’ argument. Because the current dispute between the parties involves security only for post-judgment entries, we reject defendants’ attempt to enlarge the scope of the court’s inquiry. Further, with specific respect to post-judgment entries, defendants have failed to demonstrate to the court that the current bond, as a substitute for cash deposits, unavoidably poses a risk to the potential revenue the government may receive according to Proclamation 9980.

In further support of their current position, defendants argue that “[b]onding (in lieu of paying estimated duty deposits as required by 19 U.S.C. § 1515(a)) is a unique privilege. It is so unique, in fact, that almost no other entity has it” and that “[f]or years, CBP conferred this privilege to *Oman Fasteners* . . .” Defs.’ Resp. 2. Defendants’ argument suggests that it is up to Customs to decide whether *Oman Fasteners* should be “conferred this privilege.” That privilege was conferred by this Court, not CBP, in *Oman Fasteners II* as an exercise of equitable discretion, in granting the government’s motion for a stay pending appeal of the judgment *Oman Fasteners* obtained.

The government’s argument also fails to recognize that *Oman Fasteners* is in a different position than are most of the other litigants that contested Proclamation 9980 because it was among the few litigants who obtained a judgment against the United States under which Proclamation 9980 was invalidated. The government’s interest in protection of potential revenue was a critical consideration underlying our decision in *Oman Fasteners II* and remains a critical consideration today, but it cannot be our only consideration. When we ordered, both in *Oman Fasteners II* and *Oman Fasteners III*, that the parties consult with the objective of reaching agreements that will be adequate to protect the revenue, we reasonably expected that the parties would act in good faith in their dealings with each other. Based on the uncontested facts underlying the government’s failure to honor its agreement of August 19, 2022, we must conclude that certain of defendants’ recent communications with *Oman Fasteners* have fallen short of that standard. In the future, defendants must meet that good faith standard in order to continue to require from *Oman Fasteners*, under the court’s supervision, security for potential Section 232 duty liability pending their appeal of the judgment awarded to *Oman Fasteners*.

D. The Court Will Not Conduct a Hearing Before Ruling on Oman Fasteners's Motion

Oman Fasteners requested “that the Court hold any hearing on this motion no later than Wednesday, September 28, 2022, and issue its ruling by the first week of October . . .” Pl.’s Mot. 2. Defendants have waived any right to an evidentiary or other hearing. Defs.’ Resp. 1 n.1. Because we are granting immediate relief to Oman Fasteners, and because the uncontested facts are sufficient to allow us to do so, we are issuing our order without conducting a hearing on Oman Fasteners’s motion.

III. CONCLUSION AND ORDER

We agree with movant that, having obtained a bond in the larger amount (which bond the court presumes to be in effect), Oman Fasteners now should be permitted to discontinue making cash deposits for potential Section 232 duty liability. We consider movant’s request that we “order Defendants to honor the full amount of Oman Fasteners’ current Section 232 bond *and permit Oman Fasteners to continue bonding for its potential Section 232 liability after exhaustion of the current bond,*” Pl.’s Reply 8 (emphasis added), to be too indefinite and unnecessarily broad in attempting to address matters that need not be decided at this time. We are allowing the exclusion from the Section 232 duty deposit requirement to continue until such time as defendants move for, and obtain from this Court, a modification of the requirements of this Opinion and Order, or Oman Fasteners voluntarily enters into an agreement with defendants modifying those requirements.

Therefore, upon consideration of Oman Fasteners’s motion, defendants’ response, and Oman Fasteners’s reply, and upon due deliberation, it is hereby

ORDERED that the court’s order in *Oman Fasteners, LLC v. United States*, 46 CIT __, 567 F. Supp. 3d 1364 (2022) be, and hereby is, modified as set forth in this Opinion and Order; it is further

ORDERED that Oman Fasteners’s Emergency Motion to Compel Defendants’ Compliance with the Court’s April 15, 2022 Order (Sept. 19, 2022), ECF Nos. 136 (conf.), 137 (public), be, and hereby is, granted in part and denied in part; it is further

ORDERED that, effective immediately, defendant United States and officers thereof, including, specifically, the Commissioner and other officers of U.S. Customs and Border Protection, shall not require plaintiff Oman Fasteners to make cash deposits for potential duty liability under the Presidential Proclamation, Proclamation No. 9980, *Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States*, 85 Fed. Reg. 5,281 (Exec.

Office of the President Jan. 29, 2020) (“Proclamation 9980”), on Oman Fasteners’s entries of merchandise into the United States; and it is further

ORDERED that defendants, during the pendency of the stay pending appeal, shall continue to exclude plaintiff Oman Fasteners from any requirement to make cash deposits for potential duty liability under Proclamation 9980 until: (1) defendants, upon motion, and for good cause shown, obtain from this Court an order modifying the terms of this Opinion and Order; or (2) Oman Fasteners voluntarily enters into an agreement with defendants that modifies the terms of this Opinion and Order.

Dated: October 21, 2022

New York, New York

/s/ Jennifer Choe-Groves
JENNIFER CHOE-GROVES, JUDGE

/s/ M. Miller Baker
M. MILLER BAKER, JUDGE

/s/ Timothy C. Stanceu
TIMOTHY C. STANCEU, JUDGE

Slip Op. 22–120

GARG TUBE EXPORT LLP AND GARG TUBE LIMITED, Plaintiffs, v. UNITED STATES, Defendant, and WHEATLAND TUBE AND NUCOR TUBULAR PRODUCTS INC., Defendant-Intervenors.

Before: Claire R. Kelly, Judge
Court No. 20–00026

[Sustaining the U.S. Department of Commerce’s second remand redetermination and final results in the 2017–2018 administrative review of the antidumping duty order covering welded carbon steel standard pipes and tubes from India.]

Dated: October 24, 2022

Ned H. Marshak and *Jordan C. Kahn*, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, of New York, NY, for plaintiffs Garg Tube Export LLP and Garg Tube Limited.

Robert R. Kiepara, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for defendant United States. Also on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Franklin E. White, Jr.*, Assistant Director. Of counsel was *Shelby M. Anderson*, Senior Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C.

Robert E. DeFrancesco, III, *Theodore P. Brackemyre*, *Alan H. Price*, and *Paul A. Devamithran*, Wiley Rein LLP, of Washington, D.C., for defendant-intervenor Nucor Tubular Products, Inc.

OPINION

Kelly, Judge:

Before the court is the U.S. Department of Commerce’s (“Commerce”) second redetermination on remand filed pursuant to the court’s order in *Garg Tube Exp, LLP v. United States*, 569 F. Supp. 3d 1202 (Ct. Int’l Trade 2022) (“*Garg II*”) in connection with Commerce’s 2017–2018 administrative review of the antidumping duty (“ADD”) order on welded carbon steel standard pipes and tubes (“CWP”) from India, covering the period of review from May 1, 2017 to April 30, 2018. *See [CWP] from India*, 85 Fed. Reg. 2,715 (Dep’t Commerce Jan. 16, 2020) (final results of antidumping duty admin. review; 2017–2018) (“Final Results”) and accompanying Issues and Decision Memorandum, A-533–502, (Jan. 9, 2020), ECF No. 24–5 (“Final Decision Memo.”). In *Garg II*, the court remanded Commerce’s first remand results to reconsider its determination that a particular market situation (“PMS”) existed in India for hot-rolled coil steel (“HRC”) and its regression methodology applying a PMS adjustment, or explain its determinations and support them with substantial evidence. *Garg II*, 569 F. Supp. 3d at 1220–21. On remand, under respectful protest, Commerce no longer finds that a PMS existed, and accordingly no longer applies a PMS adjustment to the costs of production

for sales based on constructed value. *See* Final Results of Redeterm. Pursuant to Ct. Remand, June 9, 2022, ECF No. 98 at 17–22 (“Second Remand Results”). Commerce’s redetermination is supported by substantial evidence and complies with the court’s remand instructions. Therefore, Commerce’s Second Remand Results are sustained.

BACKGROUND

The court presumes familiarity with the facts of this case as set forth in its previous opinions remanding Commerce’s First Remand Results for further consideration, and recounts only the facts necessary to consider the Second Remand Results. In 2018, Commerce conducted an administrative review of the ADD order covering certain CWP from India for the period of review covering May 1, 2017 through April 30, 2018. *See Initiation of [ADD] and Countervailing Duty Admin. Reviews*, 83 Fed. Reg. 32,270, 32,270 (Dep’t Commerce July 12, 2018). Garg Tube Export LLP and Garg Tube Limited (collectively “Garg”), challenged the results of the Final Determination, arguing that Commerce’s use of facts available with an adverse inference, finding of a PMS, application of a PMS adjustment, and PMS methodology were contrary to law and unsupported by substantial evidence. *See Garg Tube Exp. LLP v. United States*, 527 F. Supp. 3d 1362, 1364–65 (Ct. Int’l Trade 2021) (“*Garg I*”).

In calculating Garg’s dumping margin, Commerce relied on facts available with an adverse inference to fill a gap in the record for Garg’s cost of production data. *See* Final Decision Memo. at 32–41. In *Garg I*, the court remanded Commerce’s decision to rely on an adverse inference for further explanation or reconsideration because it could not discern how Commerce applied Section 776 of the Tariff Act from Commerce’s explanation in the Final Decision Memo. *See* Tariff Act of 1930 § 776, as amended, 19 U.S.C. § 1677e (2018);¹ *See Garg I*, 527 F. Supp. 3d at 1371–73. Commerce then abandoned its use of facts available with an adverse inference, relying instead on neutral facts available. *Garg II*, 569 F. Supp. 3d at 1206. The court sustained Commerce’s use of neutral facts available in *Garg II*, and Commerce’s use of facts available with an adverse inference is no longer at issue. *Id.*

Commerce also found that a PMS existed in India which distorted the price of HRC, and applied a PMS adjustment to its sales-below-cost test. Final Decision Memo. at 19–26; Memo. Re: Decisions on [PMS] Allegations at 18–27, PD 209, bar code 3859233–01 (July 10,

¹ Further citations to the Tariff Act of 1930, as amended, are to the relevant provisions of Title 19 of the U.S. Code, 2018 edition.

2019) (“PMS Memo.”). In *Garg I*, the court remanded Commerce’s determination to use a PMS adjustment, and to apply this adjustment in its sales-below-cost test, finding that “the statute does not empower Commerce to adjust a respondent’s reported costs to account for a cost-based PMS when Commerce relies on home market or third country market sales to determine normal value.” *Garg I*, 527 F. Supp. 3d at 1370.²

In its first remand redetermination, Commerce removed the PMS adjustment to the cost of production in its sales-below-cost test, and the court sustained this aspect of the remand results. *Garg II*, 569 F. Supp. 3d at 1206, 1221; Final Results of Redeterm. Pursuant to Ct. Remand, Oct. 7, 2021, ECF Nos. 73–1 (“First Remand Results”). Commerce continued, however, to find that a PMS existed in India, affecting the price of HRC. First Remand Results at 8–10. It based this finding on: (1) the cumulative and collective impact of global steel overcapacity, (2) subsidization of the Indian HRC market by the Government of India (“GOI”), (3) trade interventions by the GOI, and (4) Garg’s nonpayment of antidumping and safeguard duties on imports of HRC on the Indian steel market. *Id.* at 19–31. In *Garg II*, the court noted that Commerce relied on several market phenomena to make its PMS determination, and explained that Commerce needed to explain specifically how these phenomena gave rise to a PMS, and how that situation affected Garg’s costs of production, in order to continue to find a PMS. *Garg II*, 569 F. Supp. 3d at 1210, 1214. The court ordered Commerce to either reconsider its finding of a PMS, or further explain its determination and support it with substantial evidence. *Id.* at 1221. The court also remanded the First Remand Results for further explanation of the regression model which Commerce used to determine its PMS adjustment because Commerce failed to address record evidence that detracted from its determination. *Id.*

Now, in its second remand redetermination, Commerce, under respectful protest, finds that there was no PMS for HRC during the period of review, and has revised Garg’s dumping margin accordingly. Second Remand Results at 20. Commerce also determines that, because there is no PMS for HRC, it need not make any adjustment to Garg’s HRC prices, and thus, the court’s instruction regarding PMS regression methodology is moot. *Id.* at 16. Defendant-Intervenor Nucor Tubular Products Inc. (“Nucor”) submitted comments disputing Commerce’s finding that there was no PMS, while Garg urges the

² Because *Garg I* remanded Commerce’s determination regarding home market sales, it did not reach the issues of whether the PMS determination was supported by substantial evidence or whether Commerce’s methodology for calculating the PMS adjustment was reasonable. *Garg I*, 527 F. Supp. 3d at 1371–73.

court to sustain the Second Remand Results in their entirety. See Def.-Int. [Nucor]’s Cmts. on Final Results of Redetermination (“Nucor Cmts.”), July 11, 2022, ECF No. 101; see also Pl. [Garg]’s Cmts. on Final Results of Redetermination (“Garg Cmts.”), July 11, 2022, ECF No. 100.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 28 U.S.C. § 1581(c) (2018), which grants the court authority to review actions initiated under 19 U.S.C. § 1516a(a)(2)(B)(iii) contesting the final determination in an administrative review of an ADD order. The court will uphold Commerce’s determination unless it is “unsupported by substantial evidence on the record, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(B)(i). “The results of a redetermination pursuant to court remand are also reviewed ‘for compliance with the court’s remand order.’” *Xinjiaimei Furniture Co. v. United States*, 968 F. Supp. 2d 1255, 1259 (Ct. Int’l Trade 2014) (citation omitted).

DISCUSSION

In its second remand redetermination, Commerce under respectful protest concludes there was no PMS for HRC in India during the period of review. Second Remand Results at 16, 19. Garg agrees with Commerce’s determination, and urges the court to sustain the second remand results. Garg Cmts. at 3–4. Nucor disputes Commerce’s finding that there was no PMS, and urges Commerce to further explain its methodology. Nucor. Cmts. at 1–6. For the following reasons, Commerce’s determination is sustained.

As the court explained in *Garg II*, a PMS exists when “the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade.” 19 U.S.C. § 1677b(e). Neither the statute nor the legislative history directly defines what constitutes a PMS. The phrase “particular market situation” existed prior to the Trade Preferences Extension Act of 2015 (“TPEA”), which added the PMS language to 19 U.S.C. § 1677b(e), and appears in 19 U.S.C. § 1677b(a)(1)(B)(ii)(III) and (C)(iii), where it triggers the use of constructed value for normal value.³ The Statement of Administrative Action to the Uruguay Round Agreements Act explains that:

³ To determine “whether subject merchandise is being sold, or is likely to be sold at less than fair value” Commerce compares the export price or constructed export price with the normal value of the subject merchandise. 19 U.S.C. § 1677b(a). Commerce may determine the normal value of the subject merchandise using one of several methodologies. See 19 U.S.C. § 1677b(a)(1)–(5). Commerce may use the constructed value of the subject merchandise if the normal value cannot be determined under paragraph (1)(B)(i) or (ii). 19 U.S.C. § 1677b(a)(4).

The Agreement does not define “particular market situation,” but such a situation might exist where a single sale in the home market constitutes five percent of sales to the United States or where there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set. It also may be the case that a particular market situation could arise from differing patterns of demand in the United States and in the foreign market. For example, if significant price changes are closely correlated with holidays which occur at different times of the year in the two markets, the prices in the foreign market may not be suitable for comparison to prices to the United States.

Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103–316, vol. 1, at 822 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4162. If a PMS exists, the statute provides that “[Commerce] may use another calculation methodology under this part or any other calculation methodology.” 19 U.S.C. § 1677b(e). The statute also provides that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade . . .” *Id.* The use of the causal phrase “such that” suggests that in addition to finding unique market phenomena, Commerce must demonstrate that those market phenomena prevent the cost of materials and fabrication from accurately reflecting the cost of production. Finally, in *Garg II*, the court held Commerce must not only identify market phenomena which might affect price, it must also explain how those phenomena are unique to a particular market. *Garg II*, 569 F. Supp. 3d at 1214.

Here, Commerce concludes that it is unable to offer further explanation of how the market phenomena affected HRC costs or how those phenomena were unique to India, and under protest, concludes there was no PMS.⁴ See Second Remand Results at 18–19. Although Nucor argues Commerce’s prior determination was correct and Commerce should simply offer a fuller explanation of its determination, Nucor Cmts. at 2–3. Commerce concedes it has no further explanation to offer. Second Remand Results at 19.

Nucor also argues that Commerce’s chosen regression methodology independently demonstrates the existence of a PMS. Nucor Cmts. at

⁴ Commerce also addresses several of Nucor’s arguments that were specifically rejected in *Garg II*, see Nucor Cmts. at 4–5 (CWP producers did not have to pay duties on imported steel; CWP producers received domestic subsidies from the GOI), explaining that to revisit an analysis already rejected by the court would be inconsistent with the Court’s order in *Garg II*. Second Remand Results at 19.

5. Nucor believes that this methodology provides a “sophisticated demonstration of both the existence of a PMS in a particular market and for individual producers as well as the specific distortive impact of that PMS on the costs of production,” in addition to showing “what the costs would be in a given country absent the existence of a PMS.” *Id.* Nucor further argues that Commerce’s chosen regression methodology shows how each Indian producer is uniquely affected by the PMS. Nucor Cmts. at 5–6. Commerce’s characterization of its chosen regression methodology addresses this argument succinctly, acknowledging that the regression model “is not itself a ‘unique market phenomenon’ that would, on its own, support a PMS determination.” Second Remand Results at 19.

CONCLUSION

For the foregoing reasons, Commerce’s Second Remand Results are supported by substantial evidence, comply with the court’s order in *Garg II*, and are therefore sustained. Judgment will enter accordingly.

Dated: October 24, 2022
New York, New York

/s/ Claire R. Kelly
CLAIRE R. KELLY, JUDGE

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